

Citation: *R. v. Walker*, 2006 YKTC 66

Date: 20060608
Docket: T.C. 05-00449
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.

JOANNE MARIE MARCELLE WALKER
a.k.a. ETHIER

Appearances:
David McWhinnie
Robert Dick

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Joanne Walker has entered pleas of guilty to seven charges: three of theft, three of fraud and one of forgery. All these offences were committed in connection with Ms. Walker's activities as an insurance broker in the City of Whitehorse.

[2] Ms. Walker had been employed by various insurance agencies for a number of years and thus was quite familiar with the insurance brokerage business and able to obtain a licence as an insurance broker.

[3] In the fall of 2004, she opened her own insurance firm which she called "Territorial Insurance Solutions." Once in business, Ms. Walker sold home, auto and business insurance to numerous members of the public, purportedly acting as agent for various major insurance companies. However, in fact, Ms. Walker had no contracts to sell insurance on behalf of these insurance companies and she did not, in fact, place insurance on behalf of the clients but kept the money paid to her in premiums.

[4] To provide her clients with the belief that they were insured, she provided them with bogus binder letters and forged pink financial responsibility cards, insurance policies and other documents. In all, between 145 and 150 phoney policies were sold. Her activities came to an end when the fraud was discovered, and her licence to sell insurance was revoked on the 6th of July, 2005. In total, members of the public were defrauded of approximately \$120,000.

[5] At the time of the discovery of the scheme, Ms. Walker still had approximately \$30,000 of the proceeds in her possession. This amount was recovered. She has since repaid \$5,000, leaving an outstanding loss of approximately \$85,000.

[6] One of the most singular and most serious aspects of this scheme is that, as a result of Ms. Walker's activities, a large number of people were driving their cars and living in their homes thinking that they were insured when they were not. The potential for a serious financial disaster befalling one or more of her clients was certainly there. Equally, it may be supposed that there was a risk that someone injured by an accident would be unable to receive due compensation.

[7] In her interviews with the probation officer, Ms. Walker suggested that her own errors and omissions insurance would have provided coverage in the event that one of her clients suffered a loss. Given Ms. Walker's experience in the insurance industry, it is inconceivable that she could have honestly thought anything of the kind. Fortunately, there were no major accidents or losses.

[8] The scheme I have just described was about as clear a breach of trust as may be imagined. Indeed, the element of trust is of the very essence of the business of an insurance agent or broker.

[9] This was a sophisticated scheme wherein Ms. Walker prepared a large number of forged documents for the purpose of covering up her activities. There were a large number of victims. There was a substantial loss. The scheme was operated over a long period of time. As stated, the offender's activities posed a grave risk to the community. In such circumstances, the cases make it abundantly clear that a deterrent sentence is called for. See, for example, *R. v. Reid*, [2003] Y.J. 101 (QL) and *R. v. Bogart* [2001] O.J. 2323 (QL).

[10] *Reid*, being a Yukon case, is very much on point. It is true that there are some distinguishing features between the two situations. Reid stole a larger amount of money and, so far as could be determined, blew it on a lavish lifestyle. She made no restitution. On the other hand, Ms. Walker, who can at least claim to have acted slightly less egregiously, was engaged in activities that, as I have already stated, involved a large number of victims who were not only defrauded of their money but placed in a very risky situation.

[11] Since the discovery of the scheme, Ms. Walker has made some attempts at restitution. It was suggested by counsel that she had repaid some \$30,000 on discovery of the scheme and that this was restitution. This is not really a correct characterization of what occurred. What occurred is that when caught, Ms. Walker still had \$30,000 of the ill-gotten gains and was relieved of them.

[12] This is not really any different than a bank robber, who, when caught, still has a portion of the money. Calling his forfeiture of that money restitution is hardly an apt description of what has occurred. However, she has paid some \$5,000 out of her own pocket. This amount, though relatively trivial in light of the total amount of the loss, is nevertheless of some significance considering her income throughout the period of making the payments totalling \$5,000 has amounted to no more than around \$1,200 per month.

[13] When the matter first appeared before me for sentencing, Ms. Walker also indicated through counsel her willingness to assign her interest in a piece of real estate, being the former matrimonial home. It was claimed that the sale of this property and her receipt of her share of the equity might produce as much as \$40,000 in restitution.

[14] At the time, Ms. Walker had not actually taken any steps to assign these funds. In the circumstances, sentencing was adjourned. In the meantime, assignments have now been prepared and produced, but it now develops that the amount to be realized will probably be a much lesser sum, possibly as little as \$10,000.

[15] Beyond what may be realized from the sale of the home, it does not appear that Ms. Walker has any reasonable prospect of paying off the balance, although she could continue to make modest payments.

[16] Mr. Dick also submitted that Ms. Walker, unlike Ms. Reid, had not spent the money on a lavish lifestyle but merely to keep her family afloat. I am prepared to accept this assertion to a certain extent, but it seems to me that the claim must lose some force when it is remembered that Ms. Walker managed to go through some \$90,000 in a period of about ten months.

[17] In sentencing for a large and sophisticated fraud, particularly one involving an egregious breach of trust, deterrence and denunciation must be the primary focus of sentencing. These considerations have not changed since the introduction of the conditional sentencing provisions of the *Code*.

[18] Indeed, as Mr. Justice Rosenberg observed in *R. v. Wismayer*, [1997] O.J. No. 1380 (QL):

General deterrence, as the principal objective animating the refusal to impose a conditional sentence, should be reserved for those offences that are likely to be affected by a general deterrent effect. Large-scale, well-planned fraud by persons in position of trust...would seem to be one of those offences.

[19] This position of the courts arises from the fact that fraud is clearly a crime of deliberation and is all the more so when, as here, it is a sophisticated scheme carried out over a long period of time. There is an old saying that judges used to refer to in cases such as this and it remains apt in the circumstances: The game, the judges would say, must not be worth the candle. When the element of breach of trust is added

to the game, the necessity to make clear that the reward is not worth the risk is all the greater.

[20] I was urged by Mr. Dick to impose a conditional sentence. While I see some distinctions between this case and *Reid, supra*, the differences, in my view, are insufficient to permit the imposition of a community-based sentence in this case.

[21] Having regard to the nature of the crimes committed by Ms. Walker, a sentence in the range of two years would be entirely apt. Giving full credit for the guilty plea and giving full credit for the efforts that Ms. Walker has made to date with respect to restitution, the sentence of the Court with respect to these matters is a sentence of 15 months imprisonment, concurrent on each count.

[22] Following your release from imprisonment, Ms. Walker, you will be subject to a probation order for a period of two years. The terms of that order will be that you:

1. Keep the peace and be of good behaviour;
2. Report to the Court as and when required;
3. Report, within two working days after the order comes into force, to a probation officer and thereafter, as directed;
4. Advise the probation officer in advance of any change of name or address;
5. Promptly notify him of any change of occupation or employment; and
6. Take such assessment and counselling as the probation officer directs.

[23] You will make restitution in the amount of \$25,000 to be paid into the Clerk of the Court, in trust for the Superintendent of Insurance. That sum is to be paid within 18 months and you will be credited as against that sum any monies that are paid into the

court pursuant to the assignment of proceeds from the sale of your real property in the City of Whitehorse.

[24] Additionally, there will be a restitution order in favour of the Superintendent of Insurance in the amount of \$85,000. Again, any amounts paid into court are to be credited against that sum if such amounts are paid prior to the entry of judgment. Obviously, any proceeds that accrue from that would be paid on a pro rata basis to those persons who suffered losses as a result of this offender's activities.

[25] In the circumstances the surcharges are waived.

[26] MR. MCWHINNIE: I think the outstanding counts, if they haven't already been stayed, Your Honour, should be.

[27] THE COURT: Stay of proceedings on the remaining counts.

FAULKNER C.J.T.C.